NP ENERGY CORP.

IBLA 82-673 Decided April 6, 1983

Appeal from decision of Colorado State Office, Bureau of Land Management, denying petition for reinstatement of noncompetitive oil and gas lease. C-25643.

Affirmed.

1. Oil and Gas Leases: Reinstatement--Oil and Gas Leases: Termination

> Reasonable diligence in submitting an annual rental payment normally requires sending the payment sufficiently in advance of the due date to account for normal delays in the collection, transmittal, and delivery of the payment. Mailing a rental payment after it is due does not constitute reasonable diligence.

2. Oil and Gas Leases: Reinstatement--Oil and Gas Leases: Termination

> A late rental payment may be justifiable if it is demonstrated that at or near the anniversary date there existed sufficiently extenuating circumstances outside the lessee's control which affected his or her actions in paying the rental fee. A late payment is not justified where there is a pending assignment of the lease which has not been approved by BLM and the lessee incorrectly assumes that the assignment will have been approved by the rental due date or where the lessee is in the process of moving its corporate offices.

APPEARANCES: Del Draper, Esq., Salt Lake City, Utah, for appellant.

OPINION BY ADMINISTRATIVE JUDGE BURSKI

NP Energy Corporation has appealed from a decision of the Colorado State Office, Bureau of Land Management (BLM), dated February 22, 1982, denying its petition for reinstatement of its noncompetitive oil and gas lease, C-25643.

Effective January 1, 1978, a noncompetitive oil and gas lease was issued to Elmer E. Gray for 1,076.21 acres of land situated in Rio Blanco County, Colorado, pursuant to section 17 of the Mineral Leasing Act, as amended, 30 U.S.C. § 226 (1976). The lease was subsequently assigned to Manhattan Resources, Inc. (Manhattan), on April 1, 1978, and to appellant on May 1, 1980. On December 10, 1981, appellant filed with BLM an assignment of the record title of oil and gas lease C-25643 to Manhattan. By decision dated January 5, 1982, BLM held that the assignment was not approved because the assignee's request for approval was not signed by an authorized officer.

By notice dated January 22, 1982, appellant was informed that oil and gas lease C-25643 had terminated by operation of law for failure to timely pay the annual rental. BLM stated that the rental payment was required to be paid on January 4, 1982 (the first working day after the anniversary date, January 1), and that it was not received until January 18, 1982. On February 8, 1982, appellant petitioned for reinstatement of its oil and gas lease. Appellant admitted that the rental payment had been mailed January 15, 1982, but asserted that it had "gone through massive changes in personnel" and had "moved our Corporate Offices from Salt Lake City, Utah to Houston, Texas." In its February 1982 decision, BLM denied appellant's petition for reinstatement, holding that either "personnel problems or the complexities of a business operation are not considered justification for the failure to make timely rental payments."

In its statement of reasons for appeal, appellant explains the circumstances surrounding failure to pay the annual rental timely. Appellant states that in "late September or early October of 1981" it agreed to reassign the lease to Manhattan and on November 16, 1981, executed the appropriate assignment form, entitled "Assignment Affecting Record Title to Oil and Gas Lease" (Form 3106-5 (February 1981)). The form was then sent to Manhattan and signed by Manhattan on November 18, 1981. Appellant states that it assumed that the assignment form was mailed to BLM "on or shortly after" December 4, 1981, and that "[s]ome date after December 4, 1981," BLM notified Manhattan that the assignee's request for approval was not properly executed and must be reexecuted. Appellant states that no notice that the assignment would have to be re-signed and resubmitted to BLM was sent to it.

Appellant concludes:

> Lacking such notice, NP Energy reasonably assumed that the lease assignment would be approved prior to the termination of the rental period. Nothing on the face of the assignment form or any notice sent to NP Energy by the Bureau of Land Management alerted them to the fact that the rental due January 4, 1982, would be their responsibility and not that of Manhattan Resources.

> Notice should have been sent to NP Energy, and in light of the lack of notice, the lease should be reinstated.

Appellant also asserts that confusion resulting from its move from Salt Lake City, Utah, to Houston, Texas "[d]uring the fall of 1981 * * * may have prevented [it] * * * from paying the rental payment on time." 1/

Failure to pay the annual rental for an oil and gas lease on or before the anniversary date of the lease results in the automatic termination of the lease by operation of law. 30 U.S.C. § 188(b) (1976). The Secretary of the Interior may reinstate oil and gas leases which have terminated for failure to pay rental timely only where the rental is paid or tendered within 20 days of the due date and upon proof that such failure was either justifiable or not due to a lack of reasonable diligence. 30 U.S.C. § 188(c) (1976).

[1] Reasonable diligence normally requires mailing the rental payment sufficiently in advance of the due date to account for normal delays in the collection, transmittal, and delivery of the mail. 43 CFR 3108.2-1(c)(2). In the present case, appellant mailed the rental payment on January 15, 1982, 14 days after the due date. We have consistently held that mailing the rental payment after the due date does not constitute reasonable diligence. Kristie R. Cobb, 67 IBLA 59 (1982), and cases cited therein.

[2] A failure to make timely payment may be justifiable, however, if it is demonstrated that at or near the anniversary date there existed sufficiently extenuating circumstances outside the lessee's control which affected its actions in paying the rental fee. International Resource Enterprises, Inc., 55 IBLA 386 (1981), and cases cited therein. Proximity in time and causality of the untoward occurrence are essential elements. Id.

Appellant asserts that its failure to pay timely was caused by BLM's failure to notify it that the assignment to Manhattan had not been approved. The record, indeed, indicates that appellant was not notified of the decision

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1/ Appellant also argues that it would be unjust to terminate its oil and gas lease because the underlying reason for failure to pay the rental timely was confusion regarding who was authorized to sign the assignee's request for approval and the Department has decided, as a matter of public policy, to discontinue processing the qualification documents which in part indicated authorized corporate personnel. See 47 FR 8544 (Feb. 26, 1982) (deleting in part 43 CFR 3102.2-5(a) (1981)). The regulatory change, however, has not done away with the requirement that a request for approval be signed by an authorized person within the corporation. The new regulation, 43 CFR 3102.4 (47 FR 8545 (Feb. 26, 1982)), provides that a request for approval of an assignment must be signed "by the potential lessee or by anyone authorized to sign on behalf of the potential lessee." (Emphasis added.) Accordingly, we conclude that, even under the present regulations, it would be appropriate for BLM to require that a request by a corporation for approval of an assignment be signed by an authorized person.

not to approve the assignment. However, a request for approval of an assignment is made by the assignee. See Petrol Resources Corp., 65 IBLA 104 (1982). Thus, notice of defects in the assignment is properly given not to the assignor but rather to the assignee. Moreover, that decision was not made until January 5, 1982, 4 days after the due date. Therefore, the fact that a copy of the decision was not sent to appellant cannot be considered a circumstance at or near the anniversary date which affected appellant's actions in paying the rental fee.

Even if we were to hold that BLM's failure to notify appellant of the decision not to approve the assignment caused the late payment, we could not conclude that the late payment was justified. Where a proposed assignment has not been approved by BLM, the holder of record of the lease is the assignor, not the assignee. Victory Land and Exploration Co., 65 IBLA 373 (1982). The assignor continues to be responsible for the performance of any and all obligations under the lease, including payment of the annual rental, until approval of the assignment by BLM, under section 30(a) of the Mineral Leasing Act, as amended, 30 U.S.C. § 187a (1976). This applies despite the fact that the assignment is deemed to be effective "as of the first day of the lease month following the date of filing in the proper land office." Id. Where appellant remained responsible for making the rental payment, it cannot properly attribute its failure to pay timely to BLM. The proximate cause of the late payment would not have been BLM's failure to notify, but, rather, appellant's lack of diligence in handling its obligations. 2/ This cannot be considered a justifiable excuse entitling appellant to reinstatement. Alminex U.S.A., Inc., 64 IBLA 274 (1982).

Finally, the late payment was not justified by the fact that appellant was in the process of moving its corporate offices. We question, first of all, whether a move which took place in the fall of 1981 was the proximate cause of the late payment. In any case, we have consistently held that neither the bulk nor the complexity of a business organization are adequate justification for a late payment. International Resource Enterprises, Inc., supra, and cases cited therein. Similarly, whatever confusion resulted from the move from Salt Lake City, Utah, to Houston, Texas, which was eminently within the lessee's control, will not be considered adequate justification.

Accordingly, we conclude that BLM properly rejected appellant's petition for reinstatement. We note, however, that section 401 of the recently enacted

2/ We recognize that the filing of a proposed assignment in conformity with the applicable law and regulations ordinarily requires approval by the Department. 30 U.S.C. § 187a (1976); Petrol Resources Corp., supra. Thus, normally, appellant might assume that its assignment would be approved in due course. However, that assumption is only reasonable if there has been conformity with the applicable law and regulations. In this case, there had not been such conformity. Moreover, appellant could not predict when approval would be granted. Thus, appellant could not reasonably assume, as it contends, that the assignment to Manhattan would be approved by Jan. 1, 1982, the rental due date.

Federal Oil and Gas Royalty Management Act of 1982, P.L. 97-451, 96 Stat. 2447, amended section 31 of the Mineral Leasing Act of 1920, 30 U.S.C. § 188 (1976) to afford an additional opportunity to reinstate a lease terminated by operation of law. If appellant wishes to avail itself of this provision, it should inquire promptly at the Colorado State Office.

Pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

James L. Burski
Administrative Judge

We concur:

Douglas E. Henriques
Administrative Judge

Will A. Irwin
Administrative Judge.